In the High Court of Uttaranchal at Nainital

Court No.6

Petition No. 1013 of 2003 (M/S)

1. State of Uttaranchal
2. Executive Engineer,
   Construction Division
   PWD Ranikhet
   District Almora ……Petitioners

Vs.

1. Bhawani Lal Verma
   S/o Sri Kishan Lal Verma
   Village Udalikha,
   P.O. Ganai,
   District Almora
2. Deputy Labour Commissioner,
   Kumaon Region,
   Haldwani, Nainital
2. Labour Commissioner,
   Uttaranchal, Haldwani
   Nainital ……Respondents

Counsel for the Applicant/Petitioners: - Sri Bhupendra Singh,
Standing Counsel

Date of Judgment : - 13.10.2003

Hon'ble Rajesh Tandon, J.

The present Writ Petition has been filed challenging the orders passed by the respondents No. 2 and 3 dated 24.7.2000 and 29.7.2002 in case No. PGA/97 and appeal No. 5 of 2002.

Brief facts giving rise to the present Writ Petition are that the respondent No. 1 has filed an application as under sub rule (1) of Rule 10 of the Payment of Gratuity Act before the Controlling Authority under the Payment of Gratuity Act. The orders passed by the Deputy Labour Commissioner, Kumaon Region, Haldwani (Nainital) and the order passed

by Labour Commissioner are being challenged by way of the present Writ Petition.

Respondent no. 1 has filed the application under the Payment of Gratuity Act, 1972 stating therein that he was employee in the office of the Executive Engineer, Construction Division PWD, Ranikhet, District Almora since 1st January, 1954 as Baildar. The respondent No. 1 has filed the application on November, 1997 claiming gratuity after retirement on 31.3.1996.

According to the case of the petitioner, he was appointed on 1.1.1954 as Beldar and for continuous service of 42 years, he has retired after attaining the age of Superannuation i.e. 60 years.

According to the case of the petitioner, he has moved the application from time to time claiming his gratuity but the employer has refused to pay the same and as such he has filed the application before the Controlling Authority under the Payment of Gratuity Act, 1972 on 13.1.1997. The respondent No. 1 has claimed the gratuity to the extent of 62,865/-. The application filed by the respondent shows the basis of the claim as "completion of 60 years" in para no. 10. The wages has been shown as 1,845/-. Paragraph nos. 10, 11 and 12 of the claim petition are quoted below:

"10. Wages drawn : 1845/-

by employee

11. Total Gratuity payable : 63,865/-

To the employee and interest extra the whole amount.

12. Amount of Gratuity : 63,865/-

Claim by the applicant.

Along with the application, the petitioner has also filed an application for condonation of delay stating therein that from time to time he has demanded the gratuity from the employer but the employer has

always neglected to pay the same and as such delay in filing the application may be condoned.

The petitioner has filed the objections and opposed the prayer of condonation of the delay. On 25.7.1997, the Controlling Authority under the Payment of Gratuity Act, 1972 has passed the order condoning the delay and has registered the claim of the petitioner, objections were also invited.

On the application of the respondent No. 1 for the payment of gratuity, the petitioner has filed the objections that the claimant is not entitled for the gratuity as he was employed as a class-IV employee. In para no. 2 of the objections, it has been admitted by the petitioner that as Class IVth employee he was employed on the monthly wages. The admission to that effect in para 2 is quoted below:

> Þfd ikFkh ek= fQYM prFk J.kh d #i e ekfld oru ij dk;jr Fkk vkj fu;fer depkjh ;k lod ugh Fkk vkj bl idkj og dkbZ xP;Vh iku dk ik= ugh gSAÞ

On the aforesaid facts, the petitioner has stated before the Controlling Authority that although he was an employee on the monthly wages but since he was not a regular employee and therefore he is not entitled for gratuity.

The Controlling Authority vide order dated 26.7.2000 has observed that the petitioner has retired after attaining the age of 60 years. He was employed as Beldar on 1.1.1954 on a salary of Rs. 1,845/- and as such claim of Rs. 63,865/- was awarded towards gratuity alongwith an interest of 12% per annum. The controlling Authority while awarding the claim of the respondent no. 1 has also perused the record as will appear from the order passed by the respondent no. 2 to the following effect:

> Þvr% ifroknh)kjk iLrqr vfHkys[k d vk/kkj ij foHkkx ij ykxw ‘kklukn’k d vk/kkj ij okn Jh Hkokuh yky dk 42 o”kZ dh lok dh xP;Vh dk ykHk nr g;s xP;Vh dh /kujkf’k j0 77532@ #0¼lrgRrj gtkj ikp lk cRrhl ek=½ rFkk fnukd 1-4-96 ls 31-7-2000@& rd #0 49426 vFkkr dqy

/kujkf'k j0 1,26958@& ¼#0 ,d yk[k NCcsl gtkj ukS lkS vBBkou ek= ½ dh /kujkf'k dk Hkqxrku djus gsrq izfroknh i{k mRrjnk;h gSA Þ

Aggrieved by the aforesaid order, the petitioner has preferred an appeal under Rule 18 of the Payment of Gratuity (Central Rule, 1972). The appeal was presented on 9.5.2001 whereas the order was passed on 26.7.2000. The Appellate Authority vide its order dated 29.7.2002 has dismissed the appeal.

The Appellate Authority has considered that the respondent no. 1 is entitled for the gratuity as he has retired after attaining his age of 60 years.

A perusal of the order passed by the Controlling Authority shows that the order was passed after considering the statement on behalf of the petitioner(emplyer).

The Controlling Authority has come to the conclusion that it was admitted by DW-1 Sri Devi Singh Bisht that on 1.7.1954 respondent no. 1 was appointed and he has already retired on 31.3.1996. The statement made by Sri Devi Singh Bisht, who has also admitted that the salary of the petitioner was fixed. The statement is quoted below:

> Þe/ ;g ugh crk ldrk fd mudk oru fn0 31-3-96 l/ # 1845 Fkk ;k ugh yfdu vkt dh rkjh[k e/ Jfed d/ leku in e/ l/[;k 4976/23-7-99-14 ,u th 98 fn- 26-8-99 3200 fQD1 gk x;k gA ;g dguk xyr g/ fd Jfed 63865 e; 18 ifr'kr C;kt lfgr yu/ dk vf/kdkjh gSÞ

Section 2(e) defines 'emplyee' as under:/

> "*employee means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative*

Capacity,but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity."

The word "continuous service" has also been defined under Section 2(a), the same is incorporated as under:

"Continuous Service – *For the purposes of this Act,-*

(1) an employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treading the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay-off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act,"

In view of the aforesaid facts, the application of the respondent no. 1 was maintainable under Section 4 of the Payment of Gratuity Act, clause (a) Section 4 provides that gratuity is payable to an employee on reaching the age of superannuation, Section 4 (a) of the Payment of Gratuity Act is quoted below:

"Payment of gratuity- (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to

disease,"

In fact it is a command to the employer to pay the gratuity amount to the employee. Section 7 of the act provides for payment of gratuity it reads as under:-

> ***"Application for gratuity.*** *– (1) An employee who is eligible for payment of gratuity under the Act, or any person authorized in writing, to act on his behalf, shall apply, ordinarily within thirty days from the date of gratuity become payable, in Form 'I' to the employer:*
>
> *Provided that where the date of superannuation or retirement of an employee is known, the employee may apply to the employer before thirty days of the date of superannuation or retirement.*
>
> *(2) A nominee of an employee who is eligible for payment of gratuity under the second proviso to sub-section (1) of Section 4 shall apply, ordinarily within thirty days from the date the gratuity become payable to him, in Form 'J' to the employer:*
>
> *Provided that an application on plain paper with relevant particulars shall also be accepted. The employer may obtain such other particulars as may be deemed necessary by him.*
>
> *(3) A legal heir of an employee who is eligible for payment of gratuity under the second proviso to sub-section (1) of Section 4 shall apply, ordinarily within one year from the date the gratuity become payable to him in Form 'K' to the employer.*
>
> *(4) Where gratuity becomes payable under Act before the commencement of these rules, the periods of limitation specified in sub-rules (1), (2) and (3) shall be deemed to be operative from the date of such commencements.*
>
> *(5)An application for payment of gratuity filed after the expiry of the periods specified in his rule shall also be entertained by the employer, if the applicant adduces sufficient*

cause for the delay in preferring his claim, and no claim for gratuity under the Act shall be invalid merely because the claimant failed to present his application within the specified period. Any dispute in this regard shall be referred to the controlling authority for his decision.

(6) An application under this rule shall be presented to the employer either by personal service or by registered post acknowledgement due."

Rules have been framed under the Payment of Gratuity known as the Payment of Gratuity (Central Rules, 1972) Rule 7 provides that the application for grant of gratuity shall be filed within 30 days from the date of the gratuity is payable.

It was argued by the State Counsel on behalf of the petitioner that since the application was filed beyond 30 days, therefore, the application should have been rejected as time barred.

As will appear from the aforesaid facts that objections were filed by the petitioner opposing the delay and by a separate order the Controlling Authority has condoned the delay thereafter the objections were filed by the petitioner stating therein that the respondent no. 1 is not entitled for the claim of gratuity. The same has also been dealt with by the Controlling Authority after taking evidence of both i.e. employer and employee. Therefore, there is no merit in the submission of the counsel for the petitioner that the application for payment of gratuity was barred by time.

Standing Counsel has submitted that the appeal should have been treated as well within time. Suffice it to say that the appellate authority while dismissing the appeal has observed that the employee concerned was entitled for the gratuity as he has retired on attaining the age of superannuation. An employee who has already retired after completing the service of 42 years cannot been deprived of getting the gratuity.

The counsel for the petitioner has submitted that the gratuity is not included under the Civil Services Regulations under the Fundamental Rules. Rule 41 provides that the pension includes gratuity.

So far as the payment of gratuity is concerned, it has been held by the Apex Court in the case of R. Kapur Vs. Director of Inspection (Painting and Publication) Income Tax and another (1994), 6 S.C.C. 589 that the pension and gratuity are no longer any bounty to be disturbed by the Government to its employee on their retirement but it is their valuable right. The Apex Court has followed (1985) 1 Supreme Court Cases 429, State of Kerala Vs. M. Padmanabhan Nair where the Apex Court has held that that the employee concerned will be entitled to get 18% interest on the payment of gratuity. The observations are quoted below:-

> *"8. In this appeal before us the appellant urges that he would be entitled to 18% interest at least in view of judgment of this Court in State of Kerala v. M. Padmanabhan Nair. Relying on this ruling, it is submitted that there is unjustified culpable delay in issuing the No Demand Certificate. The Tribunal have held that DCRG cannot be withheld because of the pendency of the claim for damages should have awarded interest at the rate of 18% per annum.*
>
> *10. This Court in M. Padmanabhan Nair case has held as under:*
>
> *"Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."*
>
> *11. The Tribunal having come to the conclusion that DCRG cannot be withheld merely because the claim for damages for*

unauthorized occupation is pending, should in our considered opinion, have granted interest at the rate of 18% since right to gratuity is not dependent upon the appellant vacating the official accommodation. Having regard to these circumstances, we feel that it is fit case in which the award of 18% is warranted and it is so ordered. The DCRG due to the appellant will carry interest at the rate of 18% per annum from 1-6-1986 till the date of payment. Of course this shall be without prejudice to the right of the respondent to recover damages under Fundamental Rule 48-A. Thus, the civil appeal is allowed. However, there shall be no order as to costs."

The aforesaid judgment of the Apex Court, State of Kerala Vs. M. Padmanabhan Nair, has been followed in H.Gangahanume Gowda Vs. Karnataka Agro Industries Corporation Ltd. in 2003 AIR S.C.W. 885, which is quoted below:

"7. Determination of the amount of gratuity-

(1) A person who is eligible for payment of gratuity under this Act or any person authorized, in writing to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section ((1) has been made or not, determine the amount of gratuity and give notice in witting to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of

long term deposits, as that Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

8. Recovery of gratuity – If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, an an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector who shall rate as the Central Government may, by notification, specify, from the date of expiry of the prescribed time as arrears of land revenue and pay the same to the person entitled thereon:

Provided that the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate:

Provided further that the amount of interest payable under this section shall, in no case exceed the amount gratuity payable under this Act."

7. It is evident from Section 7(2) that as soon as gratuity become payable, the employer, whether any application has been made or not, is obliged to determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the Controlling Authority specifying the amount of gratuity. Under Section 7 (3), the employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable. Under sub-section (3A) of Section 7, if the amount of gratuity is not paid by the employer within the period specified in sub-section (3), he shall pay,from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits; provided that no such interest shall be payable if the delay in the payment is due to the fault of the

Employee and the employer has obtained permission in writing from the controlling authority for the delayed ;payment on that ground. From the provisions made in Section 7, a clear command can be seen mandating the employer to pay the gratuity within the specified time and to pay interest on the delayed payment of gratuity. No discretion is available to exempt or relieve the employer from payment of gratuity with or without interest as the case may be. However, under the proviso to Section 7(3A), no interest shall be payable if delay in payment of gratuity is due to the fault of the employee and further condition that the employer has obtained permission in writing from the Controlling Authority for the delayed payment on that ground. Under Section 8, provision is made for recovery of gratuity payable under the Act, if not paid by the employer within the prescribed time. The Collector shall recover the amount of gratuity with compound interest thereon as arrears of land revenue and pay the same to the person entitled. A penal provision is also made in Section 9 for non-payment of gratuity. Payment of gratuity with or without interest as the case may be does not lie in the domain in discretion but it is a statutory compulsion. Specific benefits expressly given in a social beneficial legislation cannot be ordinarily denied. Employees on retirement, have valuable rights to get gratuity and any culpable delay in payment of gratuity must be visited with the penalty of payment of interest was the view taken in State of Kerala & Ors. Vs. M Padmanabhan Nair, 1985 (50) Fac LR 145. Earlier there was no provision for payment of interest on the delayed payment of gratuity. Sub-section (3A) was added to Section 7 by an amendment, which come into force with effect from 1st October, 1987. In the case of Charan Singh Vs. M/s Birla Textiles and Another, 1988 (57) Fac LR 543 SC, this aspect was noticed in the following words:

"There was no provision in the Act for payment of interest when the same was quantified by the Controlling Authority and before the Collector was approached for its realization. In fact, it is on the acceptance of the position that there was a lacuna in the law

that Act 22 of 1987 brought about the incorporation of sub-section (3A) in Section 7. That provision has prospective application."

Similarly in Gorakhpur University Vs. Dr. Shitla Prasad Nagendra, 2001(91) FLR 166, the Apex Court has held as under:

> "*This Court has been repeatedly emphasizing the position that pension and gratuity are no longer matters of any bounty to be distributed by Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest.*
>
> *Withholding of quarters allotted, while in service, even after retirement without vacating the same has been viewed to be not a valid ground to withhold the disbursement of the terminal benefits. Such is the position with reference to amounts due towards provident fund, which is rendered immune from attachment and deduction or adjustment as against any other dues from the employee. In the context of this, mere reliance on behalf of the appellant upon yet another decision of a different Division Bench of the very High Court rendered without taking note of any of the earlier decisions of this Court but merely proceeding to decide the issue upon equitable considerations of balancing conflicting claims of respective parties before it does not improve the case of the appellant any further."*

In 2003 (98) FLR 640 (Bombay High Court) between V.U.Warrier Vs. O.N.G.C., Dehradun which has been held that the valuable right of retirial benefits particularly pension and gratuity earned by the employee concerned on his retirement cannot be curtailed as they are legitimate dues to an employee. The observations are quoted below:

> *"The learned counsel for petitioner contended that retrial benefits, particularly pension and gratuity are earned by an*

employee and on his retirement is entitled to get the same from the employer and the said valuable right cannot be adjusted or set off even if employee has unauthorisedly remained in possession of official accommodation after retirement. In this connection in support of her contention, the learned counsel for petitioner has strenuously placed reliance on (i) R. Kapur v. Director of Inspector (Painting and Publication) Income Tax and another, and (ii) Gorakhpur University and others v. Shitla Prasad Nagendra (Dr.) and others. The learned counsel also contended that bydepriving the petitioner his legitimate due amount of gratuity, the Respondents are liable to pay interest. In this connection, she relied upon the judgment of the Apx Court in State of Kerala v. M. Padmanabhan Nair, and R. Kapur cited supra.

Legal position is no more res integra that pension and gratuity become valuable rights and property in the hands of employees on their retirement and payment of pension and gratuity cannot be withheld even if the employee has remained in unauthorized occupation of employer's accommodation and become liable to pay damages under the allotment Rule for overstay. To recover damages from such retired employee for unauthorized occupation, the employer has to pursue appropriate remedy in law but the said amounts payable to retired employees. In M. Padmanabhan Nair case, the Apex Court held thus:

> *"10. Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of*

payment of interest at the current market rate till actual payment."

Pension as well as gratuity is well known, is not a bounty.

In Chairman, Railway Board and Ors. Vs. C. R. Rangadhamiah and Ors. AIR 1997 SC 3828 : 1997 (6) SCC 623}, it has been held that it is a statutory right. The pension, for all intent and purpose, is a deferred salary. It is paid when a person completes the qualifying service without any blemish record in his carrier. The observations are quoted below:

> *"In Deokinandan Prasad Vs. State of Bihar, 1971 (Supp) SCR 634: (AIR 1971 SC 1409), decided by a Constitution Bench it has been laid down:-*
>
> *"Pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a Government servant." (p. 152 (Emphasis supplied)*
>
> *" In that case the right to receive pension was treated as property under Article 31(1) and 19(1) (f) of the Constitution."*

Withholding the payment of gratuity will attract Article 21 of the Constitution of India as rightly pointed out by the Apex Court that it is a matter of bread and butter. The observation of the Apex Court in S.C.W. October 2003 Part-37 page-4745 {U.P. Drugs & pharmaceuticals Co. Ltd. Vs. Ramanuj Yadav} is quoted below:

> *"The approach to be borne in mind while interpreting the welfare legislation is illustrated in Surendra Kumar Verma etc. Vs. Central Government Industrial Tribunal-cum-Labour Court, New Delhi and another ((1981) 1 SCR 789) where this Court has observed that semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare*

statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions."

The petitioner has not contested the amount of gratuity payable to the respondent no. 1. The Controlling Authority has rightly come to the conclusion that the respondent no. 1 is entitled for the amount of gratuity claimed by him.

In view of the findings aforesaid, no interference is required under Article 226 of the Constitution of India.

The petitioner is directed to pay the gratuity amount to the respondent no. 1 forthwith from the date of the filing of the certified copy of the order.

Consequently, the writ petition fails, and is dismissed. There will be no order as to cost.

(Rajesh Tandon, J.)

Dated 13.10.2003

Rawat